

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL LABRAKE,
Petitioner,

v.

PAUL STOWITZKY, *et al.*,
Respondents.

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: CIVIL ACTION
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: NO. 07-00212
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Order

YOHN, J.

And now, this 3d day of September 2009, upon careful consideration of Daniel LeBrake's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, the respondent's response, the Report and Recommendation of United States Magistrate Judge Henry S. Perkin, and petitioner's objections thereto, and the respondent's response, it is hereby **ORDERED** that:

1. Petitioner's objections are **OVERRULED**;¹
2. The Recommendation of United States Magistrate Judge Henry S. Perkin is **APPROVED**;
3. The petition for writ of habeas corpus is **DISMISSED** and **DENIED**;
4. The Clerk shall **CLOSE** this case for statistical purposes; and
5. Petitioner having failed to make a substantial showing of the denial of a constitutional right, there is no ground to issue a certificate of appealability.

s/ William H. Yohn Jr., Judge
William H. Yohn Jr., Judge

¹ Petitioner's objection as to the application of *Stone v. Powell* is sustained, but, as discussed in the memorandum accompanying this order, the remainder of that objection is overruled on the merits.